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6 NEVADA HEALTH CENTERS, INC.

7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10

11 GARY AYERS,

Case No. 2:15-cv-00871-APG-CWH

12 Plaintiff,

13 vs.

14 NEVADA HEALTH CENTERS, INC.;  
15 DOES I through V, inclusive; and ROE  
corporations I through V, inclusive,

JOINT STIPULATION AND ORDER FOR  
TEMPORARY STAY OF PROCEEDINGS

[FIRST REQUEST]

16 Defendant.

17

ORDER

18 Plaintiff GARY AYERS (“Plaintiff”) and Defendant NEVADA HEALTH CENTERS, INC.  
19 (“Defendant”), by and through their respective counsel of record, hereby stipulate to and request that  
20 the Court grant a temporary stay of all proceedings in this matter for a period of sixty (60) days  
21 pending Plaintiff’s request and receipt of a right to sue letter in a related charge he has filed before  
22 the Equal Employment Opportunity Commission (“EEOC”).

23 **I. Procedural Background**

24 On March 24, 2015, Plaintiff filed the instant matter against Defendant, his former employer,  
25 in Nevada State Court alleging violations of the Fair Labor Standards Act (FLSA) and the Nevada  
26 Revised Statutes (NRS). **Complaint [ECF 1-1].** Specifically, Plaintiff pled three causes of action:  
27 (1) violation of the FLSA wage and overtime provision; (2) violation of the NRS wage and overtime  
provision; and (3) retaliation under the FLSA. **Id.**

1           On May 8, 2015, Defendant removed this matter to the United States District Court for the  
 2 District of Nevada. **Petition for Removal [ECF 1]**. Thereafter, Defendant filed a Motion to  
 3 Dismiss asserting that there is no private right of action as to Plaintiff's second cause of action under  
 4 the Nevada Revised Statutes. **Motion to Dismiss [ECF 11]**. Plaintiff's response is currently due  
 5 May 28, 2015. ***Id.***

6           On May 18, 2015, the parties held their mandatory Rule 26(f) conference. During that  
 7 conference Plaintiff's counsel notified Defendant's counsel that Plaintiff had filed a separate charge  
 8 against Defendant with the Equal Employment Opportunity Commission (EEOC) alleging  
 9 discrimination and retaliation in violation of Title VII. **See Plaintiff's EEOC Charge filed May 18,**  
 10 **2015, attached hereto as Exhibit 1.** The parties agreed that because Plaintiff's EEOC charge and  
 11 the instant matter pertain to Plaintiff's termination of employment, the two matters are sufficiently  
 12 related. **See Fed.R.Civ.P. 42(a)** (If actions before the court involve a common question of law or  
 13 fact the court may consolidate the actions). Therefore, in an effort to allow the allegations to  
 14 proceed as one matter, Plaintiff's counsel has requested a right to sue from the EEOC via fax.  
 15 **Declaration of Christian Gabroy, attached hereto as Exhibit 2.**

16           Upon receipt of the right to sue, Plaintiff will then move to amend the Complaint to assert  
 17 such Title VII/retaliation claims. ***Id.*** Defendant has agreed to not oppose such motion and will  
 18 stipulate to the filing of the Amended Complaint. The parties further agree that once the Amended  
 19 Complaint is filed , a standard 180-day discovery period will be appropriate.

20           Moreover, both parties would be better equipped to discuss settlement and other cost-  
 21 efficient resolutions to this dispute.

## 22           II. Request for Stay

23           As discussed above, Plaintiff filed a charge of discrimination with the EEOC on May 18,  
 24 2015. **Plaintiff's EEOC Charge, attached hereto as Exhibit 1.** That charge, like the instant  
 25 matter, pertains to the termination of Plaintiff's employment. ***Id.*** Accordingly, it has a common  
 26 question of fact with the instant matter and consolidation is appropriate. **See Fed.R.Civ.P. 42(a).**  
 27 However, because Plaintiff only filed his charge on May 18, 2015, he has not obtained a right to sue  
 28 letter. **Gabroy Decl. (Ex. 2).** Nonetheless, in an effort to facilitate the proposed Amended

1 Complaint, Plaintiff's counsel has sought an expedited right to sue letter for the EEOC charge.  
 2 **Gabroy Decl. (Ex. 2).** Plaintiff's counsel will notify Defendant's counsel and the Court  
 3 immediately upon receipt of that letter and will then move to Amend the Complaint, which  
 4 Defendant will not oppose. **Gabroy Decl. (Ex. 2).** Additionally, Plaintiff's counsel believes he will  
 5 be able to obtain the right to sue letter within 30 days of filing this stipulation. **Gabroy Decl. (Ex.**  
 6 **2).** Once Plaintiff obtains his right to sue letter, he will seek to amend the Complaint to assert the  
 7 claims contained in the s EEOC charge. **Gabroy Decl. (Ex. 2).**

8 In light of the time it will take to obtain a right to sue letter, the parties request a temporary  
 9 stay in this matter. The parties believe the stay will avoid unnecessarily incurring the significant  
 10 costs and fees associated with pursuing two related matters separately in this Court, including but not  
 11 limited to, costs and fees associated with completion of discovery, completion of a significant  
 12 number of depositions, and expert discovery, prior to Plaintiff pleading all of his alleged claims. As  
 13 a result, the requested stay will further the interests of Federal Rule of Civil Procedure 1 that the  
 14 rules be administered to promote the inexpensive determination of every action. The parties request:

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1           • The Court enter a temporary stay in this matter through July 21, 2015, or until  
2 Plaintiff's Amended Complaint is filed, whichever is earlier.  
3           • The Court oOrder that the parties submit a proposed discovery plan and scheduling  
4 order within one week of the Court lifting the stay.

5 Dated: May 27, 2015  
6

7 **IT IS SO STIPULATED.**

8 Respectfully submitted,

10 /s/ Christian Gabroy, Esq.  
11 CHRISTIAN GABROY, ESQ.  
IVY HENSEL, ESQ.  
12 GABROY LAW OFFICES

13 Attorneys for Plaintiff  
GARY AYERS

Respectfully submitted,

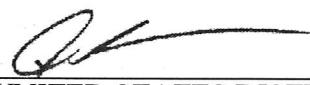
10 /s/ Kathryn B. Blakey, Esq.  
11 BRUCE C. YOUNG, ESQ.  
KATHRYN B. BLAKEY, ESQ.  
12 LITTLER MENDELSON, P.C.

13 Attorneys for Defendant  
NEVADA HEALTH CENTERS, INC.

14  
15 **ORDER**

16 **IT IS SO ORDERED.**

17 Dated: June 2, 2015.

18  
19   
20 UNITED STATES DISTRICT JUDGE

# EXHIBIT 1

EXHIBIT 1

EEOC Form 5 (11/09)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

 FEPA  
 EEOC

487-2015-00707

**Nevada Equal Rights Commission**

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Gary L. Ayers

Home Phone (Incl. Area Code)

(702) 575-7626

Date of Birth

07-08-1979

Street Address

City, State and ZIP Code

10409 Chandra Ave., Las Vegas, NV 89129

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

NEVADA HEALTH CENTERS

No. Employees, Members

Phone No. (Include Area Code)

500 or More

(702) 307-5414

Street Address

City, State and ZIP Code

1799 Mt. Mariah Dr., Las Vegas, NV 89105

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

**DISCRIMINATION BASED ON** (Check appropriate box(es).)

RACE



COLOR



SEX



RELIGION



NATIONAL ORIGIN

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

02-18-2015



RETALIATION



AGE



DISABILITY



GENETIC INFORMATION



CONTINUING ACTION

**THE PARTICULARS ARE** (If additional paper is needed, attach extra sheet(s)):

On or about June 1, 2010, I was hired by the Respondent as a Truck Driver. My last job title was Truck Driver.

On or about October 28, 2014, I was racially harassed by Manager, Colleen Petrosky. For example, but not limited to, Ms. Petrosky making a racially offensive comment and giving my work days to another white coworker. I informed Respondent of the hostile work environment; however, no action was taken to investigate or to promptly correct. On or about February 18, 2015, I was discharged.

I believe I was discriminated against because of my race, African American, and in retaliation for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

**NOTARY – When necessary for State and Local Agency Requirements**

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.  
SIGNATURE OF COMPLAINANT

**RECEIVED**

MAY 18 2015

SUBSCRIBED AND SWEORN TO BEFORE ME THIS DATE  
(month, day, year)

LAS VEGAS LOCAL OFFICE

May 18, 2015

Date

Charged Party Signature

# EXHIBIT 2

EXHIBIT 2

1 GABROY LAW OFFICES  
2 Christian Gabroy (#8805)  
3 Ivy Hensel (#13502)  
4 The District at Green Valley Ranch  
5 170 South Green Valley Parkway, Suite 280  
Henderson, Nevada 89012  
Tel (702) 259-7777  
Fax (702) 259-7704  
CHRISTIAN@GABROY.COM

6 ATTORNEYS FOR PLAINTIFF  
7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 Gary Ayers, an individual,

11 Case No.: 2:15-CV-00871 APG-CWH

12 Plaintiff,

13 vs.  
14 DECLARATION IN SUPPORT OF  
15 Nevada Health Centers, Inc.; DOES I  
through X; and ROE Corporations XI  
through XX, inclusive,  
16 Defendants.

17 Christian Gabroy, Esq., in support of such Joint Stipulation and Order for  
18 Temporary Stay of Proceeding states as follows per 28 U.S.C. §1746

19 1. As counsel for Plaintiff, Plaintiff has requested such right to sue from the  
20 EEOC on May 26, 2015 and again on May 27, 2015. Plaintiff's counsel's office  
21 has informed him that they faxed the request on May 26, 2015 and on May 27,  
22 2015.  
23 2. Plaintiff's counsel has also telephoned the EEOC and requested the right to  
24 sue.  
25 3. Plaintiff's counsel believes that such right to sue will be sent to Plaintiff's  
26 counsel within 30 days.  
27

4. Immediately upon such receipt of the right to sue, Plaintiff will move to amend the Complaint to assert such Title VII/retaliation claims. Defendant has represented that they will not oppose such Amendment and will stipulate to the filing of the Amended Complaint.
5. The purpose of the stay is not for delay but is for the expediency of the claims asserted, for utilizing and saving judicial resources and the parties' resources.

Dated this 27th day of May 2015.

Respectfully submitted,

GABROY LAW OFFICES

By       /s/                  
CHRISTIAN GABROY, ESQ.  
IVY HENSEL, ESQ.  
The District at Green Valley Ranch  
170 South Green Valley Parkway,  
Suite 280  
Henderson, Nevada 89012  
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Fax (702) 259-7704